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Margaret G. Lodise graduated cum laude from Pomona College in 1985 and received her law degree in 1988 from the University of California at Los Angeles and her LLM in Taxation at Loyola Law School in 2002. Meg is a partner at Sacks, Glazier , Franklin & Lodise LLP specializing in estate, trust and conservatorship matters, including litigation, planning and expert testimony. She has significant jury and non-jury trial experience in probate related areas and has done significant appellate work concerning both estates and conservatorships. Meg speaks regularly on estate and trust-related issues before both bar and community organizations. Meg is a fellow of the American College of Trusts and Estates Counsel, a former President of the Women Lawyers' Association of Los Angeles, past Chair of the Los Angeles County Bar Association's Trusts and Estates Section Executive Committee and a member of the Executive Committee of the Trusts and Estates Section of the State Bar of California. Meg also currently serves on the Torchbearers Board of Pomona College as well as the board of directors for WYSE, a curriculum based mentoring group.

TESTIMONY OF MARGARET G. LODISE, ESQ.
Before the Judicial Counsel Probate Conservatorship Task Force
March 17, 2005

I am appearing on behalf of the Trusts and Estates Section of the State Bar of California. The Executive Committee, of which I am a member, represents trusts and estates practitioners throughout California. It is important to note that the members of the executive committee represent both private and professional conservators, conservatees and members of the families of conservatees. Thus, the ExCom does not represent a single point of view, but, rather, the points of views of attorneys and clients interacting with the system at all levels.

The Executive committee is charged among other things with reviewing and considering whether changes to the various aspects of the Probate Code are necessary. Although we have been aware for a number of years of various isolated cases of "bad" conservators, we have never, as a committee looked at the need to fully reform the system. This is because the system, as a whole, works.

It is easy for a series of articles, like those in the Los Angeles Times, to find and focus on perceived flaws in the system. The Trusts & Estates community, I believe, finds the Los Angeles Times articles to be one-sided, failing to fully present the other side of the situation– those persons whose lives are saved by the conservatorship system in the vast majority of the cases where it works exactly as it should. Thus, our bias is toward keeping the system with minor reforms and determining a way to ensure that the many safeguards already in place are fully utilized.

In addition to my membership on the ExCom, I have had the opportunity to be involved in three cases of breach of fiduciary duty by professional conservators in the Southern California area- Rodney Swanson, Bonnie Cambalik and, most recently, Anne Chavis. The misbehavior of each of these three individuals came to light under the current system and they are instructive as to the strengths and weaknesses of the system.

Rodney Swanson, over the course of approximately two years, took several millions of dollars from close to one-hundred different conservatees. His actions were discovered when Judge Gold, the presiding probate judge in Los Angeles, and attorneys representing Mr. Swanson and conservatees became aware of irregularities in his accountings. In short, because he was required to account, under the present system, his fraud was brought to light. Two things might have brought it to light sooner: yearly accountings, and a requirement that he submit bank statements for periods other than the last month of the accounting. Mr. Swanson covered his tracks by moving money into bank accounts in the month prior to his accounting being due so that the bank account had sufficient funds to make the account balance.

Bonnie Cambalik, over the course of several years also took several millions of dollars from hundreds of conservatees. Her breaches were discovered after years of complaints by

conservatees and families of conservatees, which complaints led to an investigation by outside attorneys who broke the story of her theft. Ms. Cambalik, among other things, altered bank statements and falsified her accountings to make them appear to balance. She failed to inventory valuable personal property and employed persons with personal and business ties to her conservatorship business to perform services for conservatees. After her theft was discovered, the legislature implemented various reforms, including requiring original bank statements to be attached to accountings and requiring a statement in accountings as to whether there are relationships between the conservator and any person providing services to the conservatee. Certainly, the presence of these requirements might have brought to light Cambalik's actions sooner, but Cambalik set out to steal and had a plan for doing so–in other words, she was a criminal and is now serving jail time. As with any law on the books, those intent upon breaking the law may be successful for some period of time and it is questionable whether the system can be so far reformed as to prevent all forms of thievery. Cambalik was also assisted by the small community in which she operated and her ongoing friendships and relationships with bar and community members.

Anne Chavis was the conservator for many Veterans Administration conservatees and became the representative payee for many Veterans. The investigation of her activities is ongoing, and it does appear that money has disappeared, although it does not appear to be on the scale of either Swanson or Cambalik. Ms. Chavis' activities came to light at approximately the same time as her attorney was being subjected to disciplinary proceedings and it is unclear how much his actions may have contributed to her failure to account. It is clear that for many years, she did not render accountings and clearly, the issues which her case raises is one of determining how to keep track of each conservatorship appointed by the court so as to insure that accountings are rendered and reviewed. Once the accountings were provided, however, the surcharge system provided under the present code has served to remedy the situation and to reimburse the conservatees.

I spend time on each of these cases to highlight that arguably the largest failures of the current system were each entirely different and that they do not point to overall failure of the system but, instead, to individual issues within specific courts. Some of the conservatees mentioned in the LA Times series were conservatees of the above individuals.

It is also important to recognize that the individuals who come into the conservatorship system have significant problems. This is not to say that the system should not work for them, but to say that relying upon statements from the participants as to supposed abuses may not be a reliable source of history. A conservatee suffering from paranoia is likely to complain about any conservator, and I have yet to meet anyone who *likes* the idea of having their resources handled by someone else. Similarly, it is possible for a person to be in need of a conservatorship due to lack of proper care, nutrition and hydration and, after the provision of such services, to appear, and be, competent to handle his or her own affairs (recalling, of course, that this same person was unable to take care of him- or herself so as to avoid the conservatorship in the first place.) In other words, while it is important to consider the reports of abuse of the system, it is also important to consider the potential for erroneous reports.

Finally, it is also important to realize that, while the LA Times series focused on professional conservators, there are many, many instances of abuse of the system by individuals caring for family members which require the intervention and assistance of professionals. Any system of regulation which unduly burdens professionals, will cause them to leave the system and potentially place additional conservatees in danger. On the flip side, any system that is too cumbersome will discourage family members from becoming conservators and thus put more persons into the hands of non-family members.

The conclusion the executive committee draws from the above is that the general system actually works well and the issue which should be focused on is the implementation of the existing regulatory measures with only some minor revisions to the system.

Reforms which the ExCom would support (and has supported in the past) include licensing of professional conservators. The professional conservators have actually requested such licensing for years and the measures have not passed the legislature or, when passed, have been vetoed. Licensing, coupled with training, insures that when a professional, rather than a family member, is the conservator, that person will have training in dealing with the issues of the conservatee.

Ex Com also believes that a requirement for more frequent accountings may be beneficial, although such a requirement must be coupled with the ability of the courts to waive or modify requirements in appropriate cases and with sufficient resources to the courts to enable review of the required accountings. In conjunction with accountings, the provision of original bank statements for the accounting period may also make sense. It is important to realize, however, that a requirement that all underlying original records be provided is likely to overwhelm the court with paper–if, for instance, the conservatorship has an investment account in which frequent trades are made, a year's worth of statements may run to hundreds of pages. Additionally, of course, the more information that is required to be provided, the more opportunities will exist for sensitive private information to be inadvertently disclosed.

It is possible, and probably advisable, to provide the information now required to a broader range of people. The same persons entitled to notice of the original conservatorship petition should probably, absent a finding of good cause not to do so, be provided with notice and a copy of accountings and other filings in the conservatorship. These persons would provide another set of eyes to review the items being reviewed by the courts. Where these persons are involved with the conservatee on a regular basis, they may have information to verify the allegations of the accountings which is unavailable to the courts or attorneys reviewing the documents.

Finally, Ex Com is concerned that the single biggest reason for problems in this area is a lack of sufficient resources to review the accountings and conservatorships currently in the system. Placing the burden of additional regulation on the courts and the conservators without providing additional resources will not resolve any of the perceived problems. The population in need of conservatorships will grow as the population ages and sufficient resources must be devoted to the system, in particular to the courts, for the system to work as it is intended.

Additional resources would enable the courts and court investigators to more fully review the accountings which are presented. As things currently stand, in populous counties, the accountings which are submitted may be subject to only cursory reviews. Where enough money is at stake or relatives are present and interested, it is likely that the errors will be noticed. Where there are not relatives, or the amounts involved are relatively small, errors or fraud may be overlooked and become larger problems. The lack of resources to investigate family or conservatee complaints outside of accounting issues is similarly problematic. It is critical that a determination be made to adequately fund programs to benefit the aging population which the courts will increasingly be called upon to serve.